

Exhibit B



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6 BY MS. WOOD:

7 Q. Do you do that often? Do
8 something that you, in other
9 circumstances, criticize?

10 MS. DEARBORN: Objection to
11 form.

12 THE WITNESS: It's -- might
13 have happened, depending on the
14 purpose of what I'm studying.

15 I mean, I don't -- I
16 wouldn't include in my actual
17 surveys flawed questions or
18 things that I criticized. In
19 fact, I'm making effort for that
20 not to happen. Most importantly,
21 because I believe in what I said.

22 And if I criticize them for
23 asking those kinds of questions,
24 I believe that the wrong thing to

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1 say, to ask, and I would not
2 include that in my surveys.

3 BY MS. WOOD:

4 Q. But you have no problem with
5 asking flawed questions that you've
6 criticized, as long as you know in
7 advance that you're not going to keep the
8 results of those or use the results of
9 those?

10 A. Has --

11 MS. DEARBORN: Please let
12 me get an objection in.

13 Objection to form.

14 THE WITNESS: It has
15 nothing to do with keeping the
16 results or not keeping the
17 results. It has absolutely
18 nothing to do with that.

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1 a complete run of the survey with a
2 sufficiently large sample and you conduct
3 a survey. And sometimes people may do
4 that because they want to -- to know what
5 the result would be.

6 A pretest, I think it often
7 involves a smaller number of respondents,
8 and it's often designed to test whether
9 people, for example, say, I don't
10 understand what the survey is about, or
11 some -- something out of the ordinary
12 that tells you that there is something
13 wrong with the survey.

14 Q. How many pretests do you
15 typically conduct for a survey?

16 A. You said typically? None.

17 Q. And why is that?

18 A. In the context of
19 litigation?

20 Q. Yes.

21 A. In the context of litigation
22 it would be -- you know, sometimes an
23 attorney would say, well -- if you talk
24 about pretest like a pilot sort of --

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1 someone would say, well, I'm curious
2 if -- what you -- can you find
3 respondents and what the results will be.

4 So that will involve, you
5 know -- you know, a significant sample
6 size. So that would be more along the
7 lines of a pilot study. That happens.

8 I -- if someone tells me
9 about that -- let's say someone calls me
10 about a trademark case and say, we -- we
11 want to find out if a survey will show
12 likelihood of confusion.

13 I often say, you know, the
14 threshold for likelihood of confusion is
15 relatively low, let's say 15 percent,
16 which means that there is a -- let's say,
17 in the southern district of New York, I
18 think it's 15 percent. In some places it
19 might be slightly less.

20 It means you need a fairly
21 sizable sample size to find out -- I
22 mean, obviously, if level of confusion is
23 zero or 50 percent, you know, you don't
24 need a large sample.

13 Q. And have you heard of the
14 term "pilot test" used?

15 A. Yes.

16 Q. Is there a difference, in
17 your mind, between a pretest and a pilot?

18 A. You know, that's a good
19 question. And I think probably different
20 people may use those terms either
21 interchangeably or as different.

22 Q. And how do you use those
23 terms?

24 A. In my mind, a pilot would be

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1 But let's say it's in the --
 2 close to the threshold. You need quite a
 3 few respondents. And I tell the
 4 attorney, it's pointless. Let's design a
 5 survey as I think it should be designed
 6 and let the chips fall as they may. If
 7 the results are what you expect, just --
 8 that will be the survey. I may add even
 9 more respondents.

10 If the results are not what
 11 you expect, then you will -- you will
 12 decide what you want to do, but chances
 13 are you will decide to hire another
 14 expert.

15 Because if I would sit at a
 16 deposition and someone would ask, are you
 17 aware of any other survey that was
 18 conducted, I would say yes, because I was
 19 involved in a pretest, and I would have
 20 to -- and that happens often. That, you
 21 know -- usually, if I think beforehand,
 22 there's no way the attorney is correct, I
 23 just say, let's not waste your client's,
 24 you know, time and money. If it's kind

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1 of not so clear, then I say, okay, let's
 2 give it a try.

3 And sometimes it is what
 4 they expect. Other times it's not what
 5 they expect. If it's not what they
 6 expect, I guess they tend to hire another
 7 expert.

8 Q. How many times in litigation
 9 have you conducted a survey where you
 10 used pretests?

[REDACTED]

14 Q. Yes.

15 A. Very, very few cases. Very
 16 few. I cannot think -- I think there
 17 were -- I did some pretests in the Oracle
 18 v. Google case.

19 I might have done
 20 pretests -- I'm not even sure about
 21 that -- in a case involving the networks
 22 against a company that was mostly in
 23 New York, called Aereo -- I think it's
 24 spelled A-E-R-E-O -- which offered prime

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1 time TV for, I don't know, \$5 a month.
 2 And that -- they were pretty successful.
 3 I believe this case went all the way to
 4 the Supreme Court.

5 But -- and that was sort of
 6 an unusual -- that -- that was a
 7 different kind of survey.

8 But I normally don't --
 9 don't run pretests. I just design the
 10 survey as I think, based on my
 11 experience, it should be conducted, and
 12 then, as I said, let the chips fall as
 13 they may.

[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

11 But, anyway, we can take a
12 break.
13 MS. WOOD: Let's take a
14 break.
15 THE VIDEOGRAPHER: Going
16 off the record at 3:17 p.m.
17 (Short break.)
18 THE VIDEOGRAPHER: We are
19 going back on the record at
20 3:40 p.m.
21 BY MS. WOOD:

[REDACTED]

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1 Obviously, the impact of violating
2 double-blind may vary to some extent
3 across surveys. But I completely agree
4 that, in general, double-blind is an
5 important principle.

6 Q. And that principle is there
7 in order to ensure objectivity, correct?

8 A. In the case -- yeah, in many
9 cases, that's a key reason. Right.

10 Q. And, in fact, best practices
11 provide that the survey instrument itself
12 provide no explicit or even implicit
13 clues about the sponsorship, correct?

MS. DEARBORN: Form.

15 THE WITNESS: I think there
16 are many surveys where someone
17 could infer -- especially in
18 litigation but also in
19 academia -- where someone may
20 infer -- for example, if I show
21 you a toaster and it says Black &
22 Decker and I ask you who made
23 this product, I would assume that
24 many people would say it's

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1 probably done for Black & Decker.
2 Why are they showing me Black &
3 Decker toaster.

4 So it's unavoidable, to
5 some extent, in many surveys.

6 But I completely agree that
7 in general, double-blind is an
8 important principle that I've
9 tried to follow. Certainly
10 not -- I try not to reveal the
11 sponsor or purpose at the
12 beginning of a survey.

13 BY MS. WOOD:

17 BY MS. WOOD:

18 Q. Would you agree that
19 double-blind protocols are standard
20 practice that should be employed in
21 surveys whenever possible?

22 A. Yes. When you start a
23 survey and while respondents answer the
24 questions, it is important to do that.

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5 Q. What did you do to prepare
 6 for this deposition today?
 7 MS. DEARBORN: As usual,
 8 please set aside the contents of
 9 communications with counsel.
 10 THE WITNESS: So I reviewed
 11 the documents that I have,
 12 including my report or reports.
 13 Various -- and attachments.
 14 I met with counsel.
 15 I think that's -- that's
 16 what comes to mind.
 17 BY MS. WOOD:
 18 Q. And how long did you meet
 19 with counsel?
 20 A. So I think we had a meeting
 21 also with the AG team. I think it was
 22 sort of a Zoom meeting that might have
 23 lasted about two hours. I'm not sure
 24 about that.

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1 And I think I met with
 2 counsel. And there were also people from
 3 AG the past two days. I think each
 4 meeting lasted, perhaps, maybe four, four
 5 and a half hours.
 6 Q. Did anyone else, other than
 7 the AG team and counsel, participate in
 8 those meetings?
 9 A. I don't think so.
 10 Q. And did you review any
 11 documents in connection with your
 12 preparation for this deposition that were
 13 not produced?
 14 A. It's possible.
 15 Q. What documents did you
 16 review that were not produced?
 17 A. I saw an e-mail, internal
 18 e-mail, I think from 2018.
 19 MS. DEARBORN: Okay. And I
 20 don't think that you're entitled
 21 to get the contents of documents
 22 that were -- that were reviewed.
 23 So please don't describe
 24 the documents that you reviewed

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1 in preparation for your
 2 deposition today.
 3 THE WITNESS: Okay.
 4 MS. DEARBORN: And --
 5 BY MS. WOOD:
 6 Q. Were the documents you
 7 reviewed documents that Google's counsel
 8 showed to you? You can just answer that
 9 yes or no.
 10 MS. DEARBORN: You can
 11 answer that yes or no.
 12 THE WITNESS: Yes.
 13 MS. DEARBORN: And,
 14 Counsel, I can make a
 15 representation that those were
 16 not documents that were not
 17 produced in this case.
 18 MS. WOOD: Okay. In other
 19 words, every document he saw had
 20 been produced in this case?
 21 MS. DEARBORN: Correct.
 22 BY MS. WOOD:

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[REDACTED]

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ACKNOWLEDGMENT OF DEPONENT

I, Itamar Simonson, do
hereby certify that I have read the
foregoing pages, 1 - 393, and that the
same is a correct transcription of the
answers given by me to the questions
therein propounded, except for the
corrections or changes in form or
substance, if any, noted in the attached
Errata Sheet.

I. Simonson 3/28/2024
ITAMAR SIMONSON, Ph.D. DATE

Subscribed and sworn
to before me this
____ day of _____, 20____.

My commission expires: _____

Notary Public

HIGHLY CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER

Errata Sheet for the Transcription of Itamar Simonson, Ph.D.**Case Name:** *United States et al v. Google LLC*, No. 1:23-cv-00108-LMB-JFA (E.D. Va.)**Depo. Date:** February 28, 2024**Deponent:** Itamar Simonson, Ph.D.

Page	Line	Original	Corrected	Reason
2	5	Suite 8700	Suite 8622	Transcription Error or Mistake
2	7	“julia.wood@usdoj.gov”	“julia.tarver.wood@usdoj.gov”	Transcription Error or Mistake
4	9	“OFFICDE”	“OFFICE”	Transcription Error or Mistake
20	9	“That will be the Meta”	“That would be the Meta”	Transcription Error or Mistake
25	22	“usually would be”	“usually it will be”	Transcription Error or Mistake
27	1	“will be the company”	“would be the company”	Transcription Error or Mistake
█	█	██████████	████████████████	██████████
█	█	██████████	██████████	██████████
34	10:11	“It’s one example”	“Yeah, it’s one example”	Transcription Error or Mistake
45	12	“context effects and choice”	“context effects in choice”	Transcription Error or Mistake
50	24	“should be reserved”	“should be preserved”	Transcription Error or Mistake
█	█	██████████	██████████	██████████
89	9	“it does apply”	“it does not apply”	Transcription Error or Mistake
89	13	“programatic”	“programmatic”	Spelling Error
91	21	“programatic”	“programmatic”	Spelling Error
92	5	“programatic”	“programmatic”	Spelling Error
92	17	“programatic”	“programmatic”	Spelling Error
101	20	“programatic”	“programmatic”	Spelling Error
101	23	“Programatic”	“Programmatic”	Spelling Error
102	13	“programatic”	“programmatic”	Spelling Error
102	21	“programatic”	“programmatic”	Spelling Error
104	16	“programatic”	“programmatic”	Spelling Error

HIGHLY CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER

[illegible]

HIGHLY CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER

The image displays a 10x10 grid of 100 squares. Each square contains a black and white pixelated pattern. The patterns are arranged in a 5x5 grid of larger blocks, each block being 2x2 squares. The patterns are highly stylized, resembling abstract shapes or characters. The patterns are arranged in a 5x5 grid of larger blocks, each block being 2x2 squares. The patterns are highly stylized, resembling abstract shapes or characters.

HIGHLY CONFIDENTIAL**ERRATA SHEET FOR THE TRANSCRIPT OF:**Case Name: *United States et al. v. Google LLC*, No. 1:23-cv-00108 (E.D. Va.)

Deposition Date: 02/28/2024

Deponent: Professor Itamar Simonson

CORRECTIONS

Page	Line	Change	Reason
13	18	The words “list in hindsight. It” should read “list in hindsight, it”	Transcription error
█	█	████████████████████	██████████
█	█	████████████████████	██████████
30	12	The word “doctorate” should read “doctoral”	Transcription error
30	15	The word “or” should read “or the”	Transcription error
31	10	The word “receive” should read “received”	Transcription error
31	10	The words “Nobel Prize” should read “the Nobel Prize”	Clarification
34	22	The word “group” should read “groups”	Transcription error
37	18	The word “likely” should read “likelihood of”	Transcription error
43	4	The words “ranked ordered” should read “rank ordered”	Transcription error
44	16	The word “decisionmaking” should read “decision making”	Transcription error
44	21	The word “decisionmaking” should read “decision making”	Transcription error
44	24	The words “much better and rely” should read “much better at relying”	Transcription error
46	10	The word “Are” should read “They’re”	Transcription error
47	10	The words “work for” should read “work for a”	Clarification
47	10	The word “firm” should read “firm?”	Transcription error
52	21	The words “there’s, like” should read “that’s like”	Transcription error
55	21	The words “testify about” should read “testify about it”	Transcription error

[illegible]

[illegible]

[illegible]

[illegible]

I have inspected and read my deposition and have listed all changes and corrections above, along with my reasons therefor.

Date : 3/28/2024

I. Simonson

Itamar Simonson, Ph.D.